IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 3551 of 2006

Date of decision: 24.8.2006.

Chander Mohan Joshi …Petitioner

Versus

State of Punjab and ors …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Pankaj Gupta, Advocate, for the petitioner.
Mrs Charu Tuli, Sr DAG Punjab, for respondent-1.
Mr Sandeep Khungar, Advocate, for respondents-2 and 3.

S.S. SARON, J.

The petitioner in this petition under Articles 226/227 of the Constitution of India, seeks quashing of the order dated 22.2.2006 (Annexure P2) passed by the Executive Officer, Municipal Council, Ferozepur (respondent No.3) whereby the petitioner had been suspended from service.

The petitioner is working as Tractor Driver with the Municipal Council, Ferozepur City (respondent No.2) (Municipal Council – for short). His services were regularized on 11.7.1997. The post of driver on which the petitioner is working, is a non-provincialised post and the power to take disciplinary action for any non-provincialised post is with the Municipal Council, in terms of Section 39 of the Punjab Municipal Act, 1911 (Act – for short). However, during the course of his service, the petitioner has been suspended by the Executive Officer of the Municipal Council, which, it is alleged, he has no power to do so.

Reply has been filed by the Executive Officer, Municipal Council, Ferozepur (respondent No.3) on behalf of respondents-2 and 3. It is stated that

on 21.2.2006, the petitioner was posted on the Mallowal road, Ferozepur, which was checked by the Executive Officer along with the Accountant of the Municipal Council. On checking, it was found that the petitioner was holding receipt book (0-4 Book) in addition to the running 0-4 Book with Ashok Kumar, Clerk at the Octroi Post. The 0-4 Book which was in the hand of the petitioner, was taken by the Accountant, Municipal Council, who was accompanying the Executive Officer. However, the petitioner along with 15-20 persons who were standing there, forcibly snatched the said Book from the Accountant. Accordingly, the order of suspension (Annexure P2) was passed suspending the petitioner from service.

We have heard learned counsel for the parties.

The sole contention raised by the learned counsel for the petitioner is that the Executive Officer of the Municipal Council (respondent No.3) has no jurisdiction to pass the orders of suspension and in terms of Section 39 of the Act, only the Municipal Council can take disciplinary action against the petitioner.

In response, learned counsel for respondents-2 and 3 has contended that the petitioner, by his act of snatching the 0-4 Book from the Accountant, warranted immediate action which has rightly been taken by the Executive Officer of the Municipal Council. It is also submitted that prior to the suspension of the petitioner, the average octroi income of the Municipal Council was Rs 32,600/- per day whereas after his suspension, the income of the octroi has increased to Rs 70,000/- per day. Therefore, the petitioner was issuing forged receipts from 0-4 Book which was in his possession and the Executive Officer of the Municipal Council was left with no other choice except to suspend the petitioner, which was in the financial interest of the Municipal Council. It is also contended that Rule 3 of the Punjab Municipal (Executive Officers) Rules, 1976 and Rule 4 of the Punjab Civil Service

(Punishment and Appeal) Rules, 1970 make it clear that the Executive Officer is competent to suspend an employee of the Municipal Council.

We have given our thoughtful consideration to the respective contentions of the learned counsel for the parties.

It is not denied by the respondents that the petitioner is working on the post of driver which is a non-provincialised post. Chapter-III of the Act relates to Committees. Under the heading "Officers and Servants" are the provisions relating to constitution of the of the municipal service; the employment of other Officers and Servants, etc. Section 38 relates to constitution of the municipal service. It is provided therein that notwithstanding anything contained in the Act, the State Government may, by notification, constitute in the prescribed manner all or any of the municipal service, as mentioned therein. The services are of Municipal Executives, viz., Municipal Engineers and Sectional Officers, Municipal Health Officers, Municipal Secretaries, Municipal Accountants and such other Municipal services as the State Government may decide. The State Government may also make rules for regulating the recruitment and the conditions of service of the members of the Municipal services. Section 39 relates to employment of other Officers and Servants. Section 39(1) read as under:-

> "**39. EMPLOYMENT OF OTHER OFFICERS AND SERVANTS.-** (1) Subject to the provisions of this Act and the rules and bye-laws made thereunder, a committee may, and if so required by the State Government shall, employ other officers and servants and may assign to such officers and servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.
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> Provided that no person who is a member of a committee shall be employed by a committee during the tenure of this term and for a period of twelve months thereafter."

A perusal of the above shows that a 'Committee' may and if so required by the State Government, shall employ other Officers and servants and and may assign to such Officers and Servants such remuneration as it thinks fit and may suspend, remove, dismiss or otherwise punish any officer or servant so appointed. Therefore, the power to suspend an employee of the non-provincialised post in the Municipal Council vests with the "Committee", which in terms of Section 3(4) of the Act has been defined to mean a Municipal Council or a Nagar Panchayat as the case may be constituted under Section 12 of the Act. As such, the Executive Officer of the Municipal Council had no power to suspend the petitioner from service who was working on a non-provincialised post with the Municipal Council. The reference to Rule 3 of the Punjab Municipal (Executive Officers) Rules, 1976 (1976 Rules – for short) read with Rule 4 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (1970 Rules – for short) made by the respondents-2 and 3 is misplaced. Rule 3 of the 1976 Rules relates to the authority, the responsibilities and the duties of the Executive Officer. In terms thereof, the Executive Officer is the Principal Executive Officer of the Committee subject to provisions of the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975 and all other employees of the Committee shall be subordinate to him. It is no doubt that the employees of the Committee are subordinate to the Executive Officer in terms of Rule 3(1) of the 1976 Rules. However, the power to suspend an employee working on a non-provincialised post is with the Committee which in the case in hand means the Municipal Council. The reference made to Rule 4 of the 1970 Rules is also misplaced and it is not shown by the respondents as to how it would apply in the case of the petitioner. In other words, it has not been shown whether the 1970 Rules are applicable to employees working on non-provincialised posts of the Municipal Council.

In the circumstances, the power to suspend a non-provincialised employee vests with the Committee and does not vest with the Executive Officer of the Municipal Council in view of the provisions of Section 39 of the Act. The Executive Officer can indeed exercise powers limited to the extent that have been delegated to him by a legislation or a subordinate legislation. In the present case, though the other employees of the Municipal Council are subordinate to the Executive Officer by virtue of Rule 3 of the 1976 Rules, however, the power to suspend an employee of the non-provincialised cadre specifically vests with the Municipal Council. Therefore, the order that has been passed by the Executive Officer suspending the petitioner who is a non-provincialised employee of the Municipal Council, Ferozepur City is without legislative sanction and is unsustainable.

In the circumstances, the writ petition is allowed the impugned order dated 22.2.2006 (Annexure P2) suspending the petitioner from service is quashed. However, this will not preclude the respondents from proceeding against the petitioner in accordance with law, on the basis of allegations as alleged against him.

(S.S.NIJJAR)
JUDGE

24.8.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING - YES/NO.